



Arkansas

State Revenue Tax Quarterly

Mike Huckabee, Governor

Department of Finance & Administration Revenue Division

Richard A. Weiss, Director
Tim Leathers, Commissioner

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Streamlined Sales Tax System For the 21st Century

On April 11, 2003, Act 1273 was passed which made the necessary changes to Arkansas law to allow Arkansas to enter into the Streamlined Sales Tax Agreement ("Agreement") with other states. These changes will make it easier for out-of-state vendors to voluntarily collect Arkansas sales and use tax. Act 1273 does not go into effect until the first day of the first quarter following the effective date of the Agreement. The Agreement will become effective when at least ten states with 20% of the population of states imposing a sales tax have petitioned for membership and have been found to be in compliance with the requirements of the Agreement. It is hoped that based on the actions of the states involved, Congress will take the necessary action to require out-of-state vendors that do not have nexus to collect the sales tax of all those states that have streamlined their sales and use tax systems.

Currently, 19 states have passed legislation to be in compliance with the Agreement. Those states are Arkansas, Indiana, Iowa, Kansas, Kentucky, Minnesota, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, and Wyoming. These states represent over 22% of the population of the states imposing a sales tax. States that have passed legislation may seek membership by

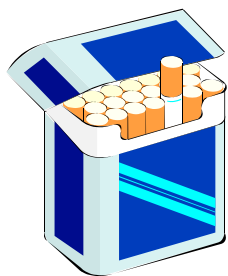
petitioning the co-chairs of the implementing states and providing a certificate of compliance. Upon receipt of the requisite number of petitions, the co-chairs shall convene and preside over a meeting of the petitioning states for the purpose of determining if the petitioning states are in compliance with the Agreement. (Requires a $\frac{3}{4}$ vote of the other petitioning states.) After the effective date of the Agreement, a state may apply to become a party to the Agreement by submitting a petition for membership and certificate of compliance to the governing board. (Requires a $\frac{3}{4}$ vote of the entire governing board.)

The Streamlined Sales Tax Project ("Project") met in Savannah on July 17th and 18th to work on a uniform registration form, auditing standards, sourcing, holiday guidelines, the digital equivalent of tangible personal property, and a certificate of compliance. The Project will meet again in Chicago on September 25th and 26th. Currently, the implementing states have not announced when their next meeting will be held.

INCOME TAX SURCHARGE

Act 38 of the First Extraordinary Session of 2003 imposes a 3% income tax surcharge on all Arkansas taxpayers. The

3% applies to the tax liability computed using existing rates. The surcharge will apply to tax years 2003 and 2004 and may either be reduced or eliminated for tax years 2005 and beyond if revenue growth projected for fiscal year 2006 meets specified thresholds. If the projected growth is less than the specified minimum, the 3% surcharge continues for 2005 and later unless repealed by the legislature. The surcharge could be reduced to 2%, 1% or completely eliminated with sufficient projected growth.



Additional Cigarette Tax

Act 38 of the First Extraordinary Session of 2003

imposes an additional cigarette tax of \$12.50/1,000 cigarettes beginning on June 1, 2003. This is equivalent to 25¢ per pack and results in a total tax of 59¢ per pack. The 3.8% stamp duty commission does not apply to this tax; however, the border zone reduction does apply.

The Act provides that wholesalers or retailers in a border zone are not permitted to sell cigarettes taxed at border zone rates to other retailers. In addition, retailers outside of a border zone are not permitted to possess cigarettes taxed at border zone rates.

The Act also imposes an additional tobacco products excise tax of 7% on items such as loose tobacco, cigars, dip, and snuff. This results in a total tax of 32% on tobacco products other than cigarettes.

MARTHA HUNT NEW CHIEF LEGAL COUNSEL



June 16, 2003, Martha G. Hunt became the Chief Legal Counsel for the Revenue Department, Department of Finance and Administration. She replaced Beth Carson, who accepted a position with Arkansas Bureau of Legislative Research.

Martha has been employed by DFA Revenue Legal Counsel since February 1995. She came to Revenue from private practice and was a staff attorney until early 2001 when she became Attorney Supervisor.

Martha is a graduate of the UALR William Bowen School of Law. She is a member of the Arkansas Bar Association, Pulaski County Bar Association, and the Tax Section of the Arkansas Bar Association, and is licensed to practice in state court, federal court, the Eighth Circuit Court of Appeals, and the United States Supreme Court.

The Office of Revenue Legal Counsel provides legal representation to the Director and the Commissioner in matters concerning tax administration, motor vehicle licensing and registration, driver's license issuance and revocation. The office also provides oral and written legal advice to taxpayers and DFA personnel on matters within the Revenue Division administration (excluding child support). The office handles collection proceedings including garnishments, bankruptcy matters and negotiation of payment agreements with taxpayers.

REGULATION 2003 - 2

Emergency and Proposed Regulation 2003-2 "Standard Mileage Rates for Income Tax Purposes" changes the standard mileage rates that are allowed to be deducted by taxpayers on state income taxes to be the same as the allowable federal rates. The rates for calendar year 2003 are 36¢ for business use, 14¢ for charitable use and 12¢ per mile for medical and moving expenses.

Copies of current and proposed regulations can be requested from the Taxpayer Assistance Office by phone at (501) 682-7751 or by email to Linda.Holmstrom@rev.state.ar.us.

REGULATIONS

Amendments to the Arkansas Gross Receipts, Compensating Use, and Tourism Tax Regulations will be set for public hearing in the near future. The regulations have been revised to incorporate recent changes in the law that affects these taxes.

What's new in Sales Tax?

The 84th General Assembly of 2003 has enacted several new laws that affect Sales and Use Tax. A summary of this is available for viewing on the web. Click on the following link for more information:

<http://www.accessarkansas.org/dfa/taxes/salestax/whatsnew2003.html>

Electronic Filing

NO FORMS To COMPLETE! File your sales tax report on line. *No paper work.* The payment is drafted from your checking account. Forms are available on the web. View a DEMO today:



<https://www.ark.org/dfa/artax/salestax/index.php>

File your income tax withholding by EFT Credit or Debit. Simply make a phone call each month. On the phone, you enter the FEIN, the period of the tax, the date you want the payment to be charged to your bank account, and the amount of the tax. The payment is drafted from your bank account. To apply, you must complete an EFT authorization agreement and mail to the Withholding Branch, P O Box 8055, Little Rock, AR 72203-8055, or fax to 501-683-1036. Forms are available online:

http://www.accessarkansas.org/dfa/taxes/wh_tax/index.html

All Electric and Natural Gas Utility Companies

Act 121 of 2003 creates on the books of the Arkansas State Treasurer two new special revenue funds to be known as the "Alternative Fuels Fund" and the "Arkansas Weatherization Assistance Fund." Arkansas electric and natural gas utilities may elect to contribute to these funds through collection of fees from residential utility customers.

Participating electric and natural gas utility companies will be assessed fees based on

sales to Arkansas residential customers of one-tenth of a cent (0.1¢) per kilowatt hour sold or one-tenth of a cent (0.1¢) per hundred cubic feet of natural gas sold. The utility may recover the cost of these fees by assessing a direct charge on each residential customer's bill that shall not exceed one dollar (\$1.00) per customer in any month. The charge shall not be considered a rate or tariffed service subject to the jurisdiction of the Arkansas Public Service Commission. Of the total fees remitted to the Department of Finance and Administration, 30% shall be credited to the Alternative Fuels Fund and 70% shall be credited to the Arkansas Weatherization Assistance Fund.

The portion of the revenues deposited to the "Alternative Fuels Fund" shall be used by the Alternative Fuels Commission for: (1) Operation of the Alternative Fuels Commission Office; (2) Grants for alternative fuels research; and (3) Grants or loans for alternative fuels projects.

Revenues deposited to the "Arkansas Weatherization Assistance Fund" shall be used by the Department of Human Services to supplement the Federal Weatherization Assistance Program. DHS may establish a weatherization assistance program and use the Arkansas Weatherization Assistance Fund to carry out the program. The program may include: (A) Establishing criteria under which an applicant may qualify for weatherization assistance; (B) Defining the weatherization measures which may be undertaken under the program; (C) Contracting for weatherization to be performed upon qualified dwellings; (D) Making repairs to dwellings so that the dwellings will qualify for federal weatherization assistance; and (E) Providing financial literacy training for recipients of weatherization assistance.

Arkansas electric or natural gas utilities may elect to contribute to the Alternative Fuels Fund and the Arkansas Weatherization Assistance Fund by notifying the Director of the Department of Finance and Administration in writing at the address as listed below. Contributing utilities will remit the amount of

the fees collected by the 20th day of the calendar month following the month of collection.

For additional information, please contact:

Arkansas Department of Finance & Administration
Miscellaneous Tax Section
Attn: Robert A. Bushmaier
P.O. Box 896
Little Rock, AR 72203-0896

SALES TAX TIP

Medical supplies paid for by Medicare or Medicaid ("Providers") are exempt from sales tax only on the amount paid by Medicare or Medicaid. Any amount not paid by one of the Providers and billed to the customer, private insurance company, etc. will be subject to the sales tax. Also taxable are deductible amounts that must be paid by the patient.

Example: Customer purchases an insulin fusion pump for \$250.00. If Medicare pays \$150.00 for the pump, the additional \$100.00 paid by the customer or private insurance carrier will be taxable.

Lawsuit filed by Truckers



Challenging sales tax

A lawsuit was filed on May 23, 2003, *Wayne Smith Trucking, Inc., v. Arkansas Department of Finance and Administration*, challenging the assessment of sales tax on trucks previously registered in Oklahoma. Plaintiffs allege that Arkansas-based truck owners, who previously registered trucks and trailers in Oklahoma under the International Registration Plan, should be allowed to re-register the vehicles in Arkansas without paying sales or use tax. Plaintiffs further allege that the imposition, assessment and collection by Defendants, of Arkansas sales and use taxes, is an illegal exaction, because the Defendants refuse to recognize the validity of prior Oklahoma registrations. The Department has filed a Motion to Dismiss the lawsuit. A hearing is set for October 30, 2003 in Pulaski County Circuit Court.

Supreme Court Decision

On June 26, 2003, the Arkansas Supreme Court issued an important decision concerning Arkansas individual income tax law, in *McFadden v. Weiss*. The Supreme Court affirmed a ruling by the Pulaski County Circuit Court that struck down a portion of Ark. Code Ann. §26-51-307, which deals with the state taxation of retirement benefits, as being

in violation of Amendment 47 of the Arkansas Constitution. Amendment 47 states that the State may not levy an ad valorem tax, which is a tax based upon the value of property. Ark. Code Ann. §26-51-307 allows a \$6,000 exemption for benefits received through an IRA or from employer sponsored retirement plans or programs. The subsection that was struck down by the Supreme Court states that no recipient of such benefits shall be allowed to deduct or recover his cost of contribution in the IRA or retirement plan. The Supreme Court ruled that since recipients of such benefits had already paid Arkansas state income tax on the amount they had contributed to the IRA or retirement plan, the State may not tax this amount when it is received by the recipients as a retirement benefit. The Supreme Court stated that the return of such contribution constituted property of the recipient, and that the disallowance of the cost of contribution constituted an unconstitutional ad valorem tax on these benefits.

The trial court ordered that the Department be enjoined from enforcing the provisions of this subsection, and no other relief has been ordered by the court at this time.

Trial is set on the remaining issues in the case on September 4, 2003 in Pulaski County Circuit Court.



CHANGES IN SALES & USE TAX

Please Call (501) 682-7104 For Periodic Updates
Regarding Local Sales and Use Taxes
www.accessarkansas.org/salestax

Name	Code	Effective Date	%	Recent Action
Chicot County	09-00	07/01	2.0	Increased from 1%
Crossett	02-01	07/01	2.75	Increased from 2.2
Dumas	21-03	07/01	3.5	Increased from 1.5
Gosnell	47-09	07/01	1.5	Enacted
Gravette	04-07	08/01	1.5	Increased from 1%
Greenwood	65-06	07/01	1.0	Enacted
Malvern	30-01	08/01	2.0	Increased from 1%
Menifee	15-02	07/01	2.0	Decreased from 3.0
Mississippi County	47-00	07/01	2.0	Increased from 1.5
Mountain Pine	26-03	07/01	1.0	Enacted
Norfolk	03-04	07/01	1.0	Enacted
St Charles	01-06	07/01	2.0	Enacted

Internet Information

Business and Personal Tax Page

<http://www.accessarkansas.org/dfa/taxes/index.html>

Telephone Information

Corporate Income Tax (501) 682-4775

Taxpayer Assistance for (501) 682-1100

Individual Income Tax 1-800-882-9275

Automated Refund Inquiry (501) 682-0200
& Tele-tax Information 1-800-438-1992

IRS (Internal Revenue Service)

<http://www.irs.gov> 1-(800) 829-1040

Calendar of Due Dates

July 15

Employee monthly withholding tax
(EFT filers due previous day)

July 21

Sales and Use tax

August 15

Employee monthly withholding tax
(EFT filers due previous day)

August 20

Sales and Use tax

September 12

Monthly withholding tax (EFT Filers only)

September 15

Employee monthly withholding tax
3rd Qtr estimated income tax (calendar year filer)

September 22

Sales and Use tax

The Arkansas State Revenue Tax Quarterly is a publication of the Taxpayer Assistance Office. The newsletter is produced and distributed electronically to tax professionals, businesses, and organizations operating in Arkansas. To be added to or deleted from the email list, contact Linda Holmstrom, phone (501) 682-7751, send an email to linda.holmstrom@rev.state.ar.us, or write to P. O. Box 1272, Ragland Building, Room 2077, Little Rock, Arkansas 72203-1272.